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11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14  
 15 **JAVIER ESPINOZA RODRIGUEZ,**

08-CV-1007 H (CAB)

16 Petitioner,

17 v.

18 **JOHN C. MARSHALL, Warden,**

**REQUEST FOR FIRST  
 ENLARGEMENT OF TIME TO  
 FILE RESPONDENT'S MOTION  
 TO DISMISS HABEAS PETITION  
 (28 U.S.C. §2254)**

19 Respondent.

20 I, Erika Hiramatsu, declare the following under penalty of perjury under the laws of the  
 21 United States:

22 I am the deputy attorney general assigned to prepare Respondent's Motion to Dismiss  
 23 Petitioner's habeas petition pursuant to this Court's July 8, 2008, Order in the above-entitled matter.

24 This is Respondent's first request for enlargement of time to file Respondent's Motion to  
 25 Dismiss, which is due today, August 25, 2008.

26 While mindful of this Court's order that a request for an extension of time should be made  
 27 in advance of the due date of the pleading, I respectfully request time to file the Motion be enlarged  
 28 fifteen (15) days to and including September 9, 2008, for the following reasons:

1       According to my records, our office's closed file from Petitioner's direct appeal was  
2 requested from off-site storage on or about July 11, 2008. I was not involved in Petitioner's direct  
3 appeal and have no prior familiarity with his case. This matter was assigned to me on August 4,  
4 2008. Although the file from appeal has yet to be located/delivered to me, I recently determined that  
5 documents Respondent has obtained from the state courts, along with documents filed in this Court  
6 by Petitioner, are sufficient to assert bases for a Motion to Dismiss.

7       My delay in filing a request for enlargement of time to file the Motion to Dismiss was due  
8 in part by the continued delay in locating our office's direct appeal file, my hope that I could draft  
9 the Motion prior to the due date, finding additional arguments to raise in the Motion, work on other  
10 matters assigned to me, and a debilitating migraine headache on Friday, August 22, 2008.

11       Petitioner is serving a state prison sentence of fourteen years, four months after a jury  
12 found him guilty of burglary (Cal. Penal Code § 459), attempting to dissuade a witness from  
13 reporting a crime (Cal. Penal Code § 136.1(b)(1)), having a concealed firearm in a vehicle while  
14 being an active participant of a criminal street gang (Cal. Penal Code § 12025(a)(1)), and carrying  
15 a loaded weapon while an active participant of a criminal street gang (Cal. Penal Code  
16 § 12031(a)(1)). The jury also found true that Petitioner personally used the firearm while attempting  
17 to dissuade the witness (Cal. Penal Code § 12022.5(a)(1)), and the trial court separately determined  
18 Petitioner had a prior serious or felony conviction under the "Three Strikes" law (Cal. Penal Code  
19 §§ 667(b)-(i), 1170.12(a)-(d)). The California Supreme Court denied Petitioner's petition for review  
20 on July 20, 2005. Petitioner filed his first state collateral action in July 2006.

21       In addition to this case, I have been working on Respondent's Answer to a federal habeas  
22 petition in *Woodall v. Hernandez*, No. 08-CV-1132 BTM (RBB) (S.D. Cal.), due Aug. 29, 2008,  
23 which I completed and submitted for supervisory review on Friday, August 22, 2008. I am also  
24 assigned to a case in the Ninth Circuit Court of Appeals, *Burton v. Adams*, No. 08-71762, to draft  
25 a Response to Petitioner's application for authorization to file a second or successive 28 U.S.C.  
26 § 2254 habeas corpus petition in the district court. The Response is due September 8, 2008, after  
27 one 30-day enlargement of time.

28       ///

1 An enlargement of time to file a Motion to Dismiss is required to allow sufficient time for  
2 its supervisory review, revision, and clerical processing, as my assigned secretary is on vacation  
3 until September 1, 2008.

4 For these reasons, I respectfully request the time for filing Respondent's Motion to  
5 Dismiss be enlarged to and including **September 9, 2008**.

6 Dated: August 25, 2008

7 Respectfully submitted,

8 EDMUND G. BROWN JR.  
Attorney General of the State of California

9 DANE R. GILLETTE  
Chief Assistant Attorney General

10 GARY W. SCHONS  
Senior Assistant Attorney General

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14 s/Erika Hiramatsu

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18 EH:ms  
19 80275186.wpd  
SD2008801783

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1                           **CERTIFICATE OF SERVICE**

2 Case Name: **Javier Espinoza Rodriguez v. John C. Marshall, Warden**

3 No.: **08-CV-1007 H (CAB)**

4 I declare:

5 On August 25, 2008, I electronically filed the following document(s):

6     •    **REQUEST FOR FIRST ENLARGEMENT OF TIME TO FILE RESPONDENT'S**  
7       **MOTION TO DISMISS HABEAS PETITION (28 U.S.C. § 2254)**  
8     •    **[PROPOSED] ORDER**

9  
10                           **Electronic Mail Notice List**

11 I have caused the above-mentioned document(s) to be electronically served on the following  
12 person(s), who are currently on the list to receive e-mail notices for this case:

13                           **NONE**

14                           **Manual Notice List**

15 The following are those who are **not** on the list to receive e-mail notices for this case (who  
16 therefore require manual noticing):

17                           California Mens Colony East  
18                           Javier Espinoza Rodriguez  
19                           CDC No. V-15361  
20                           P.O. Box 8101  
21                           San Luis Obispo, CA 93409-8101

22 I declare under penalty of perjury under the laws of the State of California the foregoing is true  
23 and correct and that this declaration was executed on August 25, 2008, at San Diego, California.

24                           Monica E. Seda

25                           \_\_\_\_\_  
26                           Declarant

27                             
28                           \_\_\_\_\_  
29                           Signature